

DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

Clause wise Discussion on the Draft Constitution

30th July 1949 to 16th September 1949

SECTION SIX

Clausewise Discussion

" FIFTH SCHEDULE

[ARTICLE 215-A(A) AND 215-B(1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

PART I GENERAL

1. *Interpretation.*—In this Schedule, unless the context otherwise requires, the expression " State " means' a State for the time being specified in Part I or Part III of the First Schedule.

2. *Executive power of a State in scheduled areas.*—Subject to the provisions of this Schedule, the executive power of a State extends to the scheduled areas therein.

3. *Report by the Governor or Ruler to the Government of India regarding the administration of the Scheduled areas.*—The Governor or Ruler of each State having scheduled areas therein shall annually, or whenever so required by the Government of India, make a report to that Government regarding the administration of the scheduled areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas,

PART II ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. *Tribes Advisory Council.*—(1) There shall be established in each State having scheduled areas therein and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council consisting of not

more than twenty members of whom as nearly as may be, three-fourths shall be the representatives of the scheduled tribes in the Legislative Assembly of the State :

' Provided that if the number of representatives of the scheduled tribes in the

Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the scheduled tribes in the State as may be referred to them by the Governor or Ruler, as the case may be.

(3) The Governor or Ruler may make rules prescribing or regulating as the case may be—

(a) the number of members of the Council, the mode of their appointment and the appointment of its Chairman and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and (c) all other incidental matters.

5. *Law Applicable to scheduled areas.*—(1) Notwithstanding anything contained in this Constitution the Governor of Tuler, as the case may be, may by public notification direct that any particular Act of Parliament of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.

(2) Governor or Ruler as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a scheduled area.

In particular and without prejudice to the generality of the foregoing power, such regulations may— (a) prohibit or restrict the transfer of land by or among members of the scheduled tribes in any such area; (b) regulate the allotment of land to members of the scheduled tribes in such areas;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes in such areas;

(3) In making any regulation as is referred to in sub-paragraph (2) of this paragraph the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART III

SCHEDULED AREAS

6. *Scheduled Areas.*—(1) In this Constitution, the expression " scheduled areas " means such areas as the President may by order declare to be scheduled areas.

(2) The President may at any time by order— (a) direct that the whole or any specified part of a scheduled area shall cease

to be a scheduled area or a part of such area;

(b) alter, but only by way of rectification of boundaries, any scheduled area; (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of a scheduled area, and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART IV AMENDMENT OF THE SCHEDULE

7. *Amendment of the Schedule.*—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended any reference to this schedule in this Constitution shall be construed as a reference to such schedule as so amended.

(2) No such law as is mentioned in sub-paragraph(1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof."

I would like very briefly to explain the principal changes which have been made in the Fifth Schedule as amended and put forward before the House. The first important change is in paragraph 4 which deals with the creation of the Tribes Advisory Council. As the paragraph originally stood in the Draft Constitution, it was obligatory to have a Tribes Advisory Council in every state where there were scheduled areas or scheduled tribes. It was felt that there was no necessity by the Constitution to create an Advisory Council for a State where there were some members of the Scheduled tribes living in some part of the State but which had no scheduled area. It was felt that if there was a necessity for creating an Advisory Council for the purposes of the scheduled tribes who are not living in a scheduled area, it would be better to leave that matter to the President whether or not to create an Advisory Council. Consequently the words " and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council ".In the case of scheduled areas there is an obligation to create an Advisory Council. In the case of scheduled tribes it is not obligatory by the Constitution to create an Advisory Council but it is left to the discretion of the President.

The other paragraph which has undergone an important change is paragraph 5. Paragraph 5 deals with the applicability of the laws made by Parliament and by the local Legislature to the scheduled areas. Paragraph 5, as it originally stood, required that if the Tribes Advisory Council directed that the law made by

Parliament or made by the local Legislature should be made applicable to the scheduled areas in a modified form, then the Governor was bound to carry out the order or the decision of the Tribes Advisory Council. It was felt that it would be much better to let the Governor have the discretion in the matter of the application of the laws made by Parliament or by the local Legislature to the scheduled areas and that his discretion should not be controlled absolutely, as it was proposed to be done by the original provision contained in paragraph 5.

The other important thing to which I should like to call the attention of Honorable Members is to paragraph 6. Paragraph 6, as originally drafted, set out a schedule of what are to be scheduled areas. This provision has become necessary particularly because it is not possible at this stage to know what are going to be the scheduled areas in States in Part III. It is felt that both for meeting the difficulty to which I have referred as well as to make the provisions elastic, it would be much better to leave the power with the President rather than to have a definite part dealing with the scheduled areas.

Another important amendment to which I should like to draw attention is paragraph 7 which is included in Part IV and which deals with the Amendment of the Fifth Schedule. Originally, as the paragraph stood, there was no provision for the amendment of the Fifth Schedule. It is now provided that Parliament may amend this Schedule and I think it is desirable that Parliament should have the power to amend this Schedule. It is no use of creating a sort of a State within a State and it is not desirable that this kind of special provision under which certain tribes would be excluded from the general operation of the law made by the legislature as well as Parliament and the provision contained in sub-paragraph (2) of paragraph 5, where, so to say, ' the Governor is constituted a law-making body for making regulations of certain character which are mentioned in (a), (b) and (c) and which are to have over-riding powers in so far as they relate to these matters over any law made by Parliament or by the legislature, should not be stereotyped for all times and that it should be open to Parliament to make such changes as time and circumstances may require. Consequently, it has been provided in the new Paragraph 7 of Part IV that Parliament shall have such power to make such amendments as it finds necessary and any such amendment of the Schedule shall not be deemed to be an amendment of the Constitution, but shall be made by the ordinary process of law.

I may mention that the Drafting Committee in putting forth this new Schedule had discussed the matter with the representatives of the provinces who are concerned with this particular matter, namely of scheduled areas and scheduled tribes. We had also taken into consideration the opinion of my Honorable Friend, Mr. Thakkar, who knows a great deal about this matter and I

may say without contradiction that this new schedule has the approval of all the parties who are concerned in this matter, and I hope that the House will have no difficulty in accepting the new Schedule in place of the old one.

Mr. President: So far as I can see. there is no other amendment to the Fifth Schedule as now proposed.

Prof. Shibban Lal Saksena: I have some amendments.

Mr. President: Coming at the last moment, these amendments have not been circulated to Members. They came in at 8.58 this morning.

The Honorable Dr. B. R. Ambedkar: I have no idea about them. These should not be allowed.

Mr. President: If you have any amendments, you may make your observations. I may tell the House that I have a set of new amendments sent in by Prof. Shibban Lal Saksena and Dr. Deshmukh.

The Honorable Dr. B. R. Ambedkar: We have no copies. We do not know what they are talking about

Mr. President: Dr. Deshmukh's amendment came in at 9.20 in the morning. Prof. Saksena's came in at 8.58 in the morning. Technically you are just before the commencement of the session but I think it is very inconvenient to the other Members.

Dr. P. S. Deshmukh (C. P. & Berar: General): My amendments are of a drafting nature.

Mr. President: Very well, they will be handed over to the Drafting Committee. I do not think there is any substance in any of your amendments. Prof. Saksena?

Mr. President: I wish to close the discussion now. Does Dr. Ambedkar wish to say anything?

The Honorable Dr. B. R. Ambedkar: Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything.

Mr. President: Then I shall put the amendments to vote now. Mr. Nariruddin Ahmad: My amendments need not be put to vote, but they could be considered by the Drafting Committee.

Paragraph 3 Was Added To The Fifth Schedule.

SIXTH SCHEDULE

Mr. President: We now go to the Sixth Schedule.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That in sub-paragraph (1) of paragraph I, before the words, ' The tribal areas ' the words ' Subject to the provisions of this paragraph ' be inserted." Originally, the draft merely said that

the Tribal areas were those which were included in the table attached to this Schedule. There was no power given to define the boundaries of those areas included in the Table. It is felt that it is necessary to give the Governor the power to define the boundaries of those areas included in the Table. In order to provide for this power for the Governor, it is necessary to add the words which are contained in this amendment

Mr. President: Amendment number 99 also relates to paragraph 1.

The Honorable Dr. B. R. Ambedkar: May I move that?

Mr. President: Yes.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

"That for sub-paragraph (3) of paragraph I, the following sub-paragraph be substituted:—

' (3) The Governor may, by public notification—

(a) include any area in Part I of the said Table,

(b) create a new autonomous district,

(c) increase the area of any autonomous district.

(d) diminish the area of any autonomous district,

(e) unite two or more autonomous districts or parts thereof so

as to form one autonomous district,

(f) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (b), (c), (d) and (e) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.' "

In this amendment, the new things to which attention must be drawn are included in sub-clauses (e) and (f) of sub-paragraph (3). As necessary because it may be required, in any particular state of affairs, that two or more autonomous districts may be united together. The power contained in sub-clause (f) is also necessary because it may be desirable to define the boundaries in case there is any particular dispute between the different tribes.

The proviso introduces a change. By comparing the proviso with the original provisos, it will be seen that there were two provisos to subparagraph (3). In the first proviso, the Governor could act under clause (b) or clause (c) on the recommendation of a Commission. But, if he wanted to act under clauses (d) or (e) he was required to have a resolution of the District Councils of the Autonomous Districts concerned. It is felt that this distinction made by the two provisos for the different parts of sub-paragraph (3) is not necessary. It is better to make it uniform by requiring the Governor to act after consideration of the report of a Commission which is proposed to be appointed under subparagraph (1) of paragraph 14 of this Schedule.

Mr. President: As regards this Schedule, as the Schedule as a whole has not

been changed but only certain amendments to some of the paragraphs have been suggested, I propose to take this paragraph by paragraph. Regarding the first para, these are the two amendments which have been moved on behalf of the Drafting Committee. I will now take the other amendments of which notice has been given. There are some printed in the second volume of the list of amendments.

(Amendments 3489, 3490 and 3491 were not moved)

There is one amendment that paragraph 1 to 16 be deleted. I do not know whether to take it.

The Honorable Dr. B. R. Ambedkar: That need not be taken.

Mr. President: ...Dr. Ambedkar, would you like to say anything?

The Honorable Dr. B. R. Ambedkar: Sir, there are just two points which have been raised in the course of the remarks made on these amendments which call for reply. The first question is the one, which was raised by Mr. Chaliha. I must say I was somewhat surprised at the amendment tabled by Mr. Chaliha, because like the Fifth Schedule the Sixth Schedule also has arisen, so to say, out of an agreement between the Drafting Committee and the Premier of Assam, my Friend,

Mr. Nichols Roy and at which conference Mr. Chaliha also was present, and he accepted the new schedule as amended by the Drafting Committee. However, it cannot take long to dispel the doubt he has in his mind as to who would constitute this Commission, who would be its members, and all matters relating to the Commission. I think if Mr. Chaliha had only read carefully the wording of the Sixth Schedule he would have seen that in appointing the Commission the Governor is not going to act in his discretion. There is no discretion left in the Governor. That being so, it is quite obvious that in consulting the Commission, and defining its terms of reference, the Governor would be guided by the advice of the local ministers, and I do not think, therefore, there need be any fears such as the one that he has expressed.

Now, with regard to the amendment of my Friend, Mr. Brajeshwar Prasad, this is the one amendment I think in which so far as I am concerned, I feel that he has urged some serious argument. He says that the whole of the tribal area should be lifted from the Province of Assam and should be made a Centrally administered area, because there cannot be any other effect of the amendment which he has put forward except the one which I have suggested. It means practically constituting the area as a Centrally administered area. But he seems to have forgotten two things. The first is this. Although we have constituted autonomous districts for the purpose of the satisfaction of the tribal people

living in those areas that they will have, at any rate for the first ten years, autonomy in the matter of the government of their area's, we have now here provided that the autonomous districts shall not constitute part of the province of Assam. That being so, it is very difficult to leave part of the province to be governed by the Governor of the province and part of the province to be administered as a Centrally administered area.

The second point he has forgotten is this. He has forgotten to take note: of the fact that even in constituting the autonomous areas, the Drafting Committee has not forgotten that there are what are called certain " front-tier areas ", bordering on the autonomous districts. It has been provided in this Schedule that so far as the administration of these frontier areas of Assam is concerned, the Governor would be acting under the President. Consequently whatever strategic importance, the frontier areas may have, the Center would certainly have ample jurisdiction to see that none of the disturbing factors to which he has made reference will find any place there. I therefore, think that all these amendments are unnecessary and out of place.

Shri Kuladhar Chaliha: Is amendment No. 139 accepted?

The Honorable Dr. B. R. Ambedkar: I cannot say off-hand now. I am only dealing with your amendment and the amendment of Mr. Brajeshwar Prasad, and I think they are unnecessary.

Mr. President: And amendment No. 139 has not been moved at all. It deals with paragraph 14.

The Honorable Dr. B. R. Ambedkar: We shall deal with it when we reach paragraph 14.

[Amendment of Dr. Ambedkar as mentioned above was adopted. Others were rejected. Paragraph 1, as amended, was added to the Sixth Schedule.]

SIXTH SCHEDULE—(CONTD.) (Paragraph 2)

The Honorable Dr. B. R. Ambedkar: (Bombay : General) : Sir,
I beg to move :

" That in sub-paragraph (1) of paragraph 2, for the words ' not less than twenty and not more than forty members ' the ' not more than twenty-four members ' be substituted"

This amendment is introduced because it was felt that the original number forty might be too large.

Sir, I move:

" That sub-paragraph (2) of paragraph 2 be deleted."

The reason why the deletion is made is because we propose to leave the delimitation of constituencies to rules rather than provide it in the Constitution

itself. Sir, I move:

" That after clause (d) of sub-paragraph (7) of paragraph 2, the following clause be added:—

' (dd) the term of office of members of such Councils. ' " This was omitted from the rule-making powers.

The Honorable Dr. B. R. Ambedkar: If you like. Sir, I would make a few observations at this stage and then probably many people may not find it necessary to speak and all these doubts, I think, would have been dispelled.

Prof. Shibban Lal Saksena : I only wanted to say that if this scheme of things is going to be put in a permanent Constitution that will mean that some areas of Assam shall remain beyond the control of Parliament for ever....

Mr. President: Power is given to the Parliament under the paragraph 20 to repeal the whole of the Schedule, if it thinks necessary. What more do you want?

Prof. Shibban Lal Saksena: Sir, I have referred to this fact in my speech.

Mr. President: Does Dr. Ambedkar like to say anything at this stage?

The Honorable Dr. B. R. Ambedkar: If you like, Sir, now that Honorable Members want to speak, let them speak.

Mr. President: I will call upon Dr. Ambedkar to reply. I think, we had better finish this now. We have had enough discussion.

The Honorable Dr. B. R. Ambedkar: We have debated this question for two hours and I think the debate was mostly on points that are really not concerned with the Schedule. It is time that we attended to the Schedule itself less any particular Member has something very new to say, we need not continue the debate.

Mr. President: I have already called upon you to reply.

The Honorable Dr. B. R. Ambedkar: I am very much obliged to you. Sir, we have two amendments before us and I propose to deal with them before I reply to the general debate.

The first amendment is No. 100 moved by Mr. Chaliha. With regard to this, I do not see how it is appropriate in sub-paragraph (5) of paragraph 2. Sub-paragraph (5) merely deals with the jurisdiction of the Regional and District Councils. It has nothing to do with any directions that may be given by the Governor or the legislature of the State. We are simply creating a District Council and a Regional Council. If the Honorable Member wanted to move any such amendment he ought to do to the appropriate provision. This Schedule deals with the subject matter with which the District Council and the Regional Council will be concerned. So I fail to understand altogether the

appropriateness of the amendment at this particular place.

With regard to amendment No. 257 whereby the Honorable Member seeks to limit the number on the Council to fifteen, it seems to me, again, quite unnecessary, because my own amendment says, 'not more than twenty-four'. Twenty-four is the maximum. Consequently, if it was necessary to have a Council of less than fifteen, even then my amendment should suffice. I therefore say that amendment number 257 is quite unnecessary.

Now, having disposed of these amendments, I will turn to the general debate on the question whether there should be Regional and District Councils for the purpose of the tribals living in Assam. Sir, in dealing with this matter, I am sorry to say, many Members who took part in the debate did not properly study the provisions contained in this Sixth Schedule. I am sure about it that if they had properly studied the provisions of this schedule they would not have raised the point which they raised that by creating these Regional and District Councils we were creating a kind of segregated population. It does nothing of the kind.

Now, the position of the tribals in Assam stands on a somewhat different footing from the position of the tribals in other parts of India.

Shri A. V. Thakkar: Hill tribals please.

The Honorable Dr. B. R. Ambedkar: I am not concerned with the terminology. I am speaking of Assam and other areas for the moment. The difference seems to be this. The tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilisation and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in a large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories. In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the red Indians in the United States as against the white emigrants there. Now, what did the United States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations or Boundaries within which the Red Indians lived. They are a republic by themselves. No doubt, by the law of the United States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so to say, within the range

of the laws made by the white people for white persons and for the purpose of the white civilization.

I agree that we have been creating Regional and District Councils to some extent on the lines which were adopted by the United States for the purpose of the Red Indians. But my point is that those who have based their criticism of this Schedule on this fact, namely that we are creating Regional and District Councils, have altogether failed to understand the binding factors which we have introduced in this Constitution. I should therefore like to refer to some of the provisions which nullify this segregation, so to say.

The first thing that we have done is this: That we have provided that the executive authority of the Government of Assam shall extend not merely to non-tribal areas in Assam, but also to the tribal areas, that is to say, the executive authority of the Assam Government will be exercised even in those areas which are covered by the autonomous districts. This, as will be seen, is a great improvement over the provisions contained in the Government of India Act, 1935. In the provisions contained in that Act, the executive was divided into two categories, one was called the Government of the province and the other executive was called the Governor in his discretion, so far as the tribal areas were concerned. This applied not only to the tribal areas in Assam, but also to completely excluded areas in other areas. The executive authority which operated upon those areas was not the executive of the province, but the Governor in his discretion. We have abolished that distinction so that the whole of the tribal area including those in the autonomous' districts is now under the authority of the provincial Government. The thing which is a binding thing, to which Honorable Members have paid no attention is this. That, barring such functions as law-making in certain specified fields such as money-lending, land and so on, and barring certain judicial functions which are to be exercised in the village panchayats or the Regional Councils or the District Councils, the authority of Parliament as well as the authority of the Assam Legislature extends over the Regional Councils and the District Councils. They are not immune from the authority of Parliament in the matter of law-making, nor are they immune—and that is the aim of the new amendment—from the jurisdiction of the High Court or the Supreme Court. This, I submit, is one binding influence.

The other binding influence is this : that the laws made by Parliament and (he laws made by the Legislature of Assam will automatically apply to these Regional Councils and to the District Councils unless the Governor thinks that they ought not to apply. In other words, the burden is thrown upon the Governor to show why the law which is made by the legislature of Assam or by the Parliament should not apply. Generally, the laws made by the local Legislature and the laws made by Parliament will also be applicable to these areas. I say

that this is another unifying influence. Yet another unifying influence to which I must make reference is this. We are not saying that the political authority or power we have given to the tribal people through the constitution of the Regional Councils or the district Councils is all the sphere of influence to which they will be entitled. On the other hand, we have provided that the tribal people who will have Regional Councils and District Councils will have enough representation in the Legislature of Assam itself, as well as in Parliament, so that they will play their part in making laws for Assam and also in making laws for the whole of India. Now, if these cycles of participation, if I may say so, to which I have referred, *viz.*, representation in the legislature of Assam and representation in Parliament, the application of the laws made by Parliament and the application of the laws made by the Assam legislature are not binding forces, I would like to know what greater binding forces we can provide for the purpose of unifying the Regional Councils and the district Councils with the political life of the province as a whole.

I do not therefore agree that in creating the Regional Councils and the district Councils, we have cut up the population of Assam into two water-tight compartments, *viz.*, tribals and non-tribals. On the other hand, we have provided, as I have stated, many cycles of participation in which both can politically come together, influence each other, associate themselves with each other, and learn something from one another. I am sure about it that the argument which has been urged against the provision of Regional Councils and District Councils is entirely based upon a misunderstanding and inadequate reading of the other provisions contained in this Schedule.

Sir, I was rather surprised at the attitude taken by my Friend, Mr. Chaliha, in moving his amendment, also at the attitude of my Friend, Mr. Rohini Kumar Chaudhari. I feel that they are not now happy and united family. What is the cause of it I do not understand, but I can say that, when these amendments were made, they were made with the consent of Mr. Chaliha, they were made with the consent of the Premier of Assam, and also with the consent of my friend, Mr. Nichols Roy, who is a principal party concerned in this. I see they are now indulging in criticising each other because of factors which lie outside this Schedule. I cannot find any other reason for this dissension, for this open dissension and hostility which has been exhibited by one against the other, and I do not wish therefore to enter into what I regard is a purely domestic quarrel.

Shri Rohini Kumar Chaudhari : Is the Honorable Dr. Ambedkar entitled to make the insinuations against us?

The Honorable Dr. B. R. Ambedkar: I am not making any insinuations; I was only saying. Sir, that it was a domestic quarrel into which I would not enter. My own view is that we have made the best provision...

Shri Kuladhar Chaliha : I object to Dr. Ambedkar imputing motives for honest opinion expressed.

The Honorable Dr. B. R. Ambedkar: I am not imputing any motives. Mr. Chaliha was a party to every change that has been made in this Schedule. I would like him to deny that fact. Can he deny it?

Shri Kuladhar Chaliha: Yes, I deny. I told Mr. Bardoloi that I did not agree with some things.

The Honorable Dr. B. R. Ambedkar: He might have whispered in the ears of Mr. Bardoloi. He did not say a single word against these changes in the Drafting Committee. I did not get his signature as I did in certain other cases, because I do not want any Member to go back upon his word. However, what I was saying was that the Regional Councils and the District Councils have been given certain autonomy for certain purposes and at the same time they have been bound together in the life of the province and in the life of the country as a whole. If these circumstances which are of a unifying character, do not bind, do not bring the tribal people with the rest of the plains people in Assam and in the country, then the cause for such an unfortunate event must be found in something else. My friend, Mr. Rohini Kumar Chaudhari, stated that if you create the Regional Councils, the tribal areas will go the way of Tibet and go the way of some other area. I do not know that that prophecy could be confined only to the tribal areas. I fear that Assam itself might go. For that we cannot make any provision in the Constitution. I am sure about it.

Shri B. Das (Orissa : General) : May I ask Dr. Ambedkar if he is aware that British agents are still working on the Assam—Burma border and that they have been responsible for the troubles between the Karens and the Burmans, and whether those same British agents are not still working in the tribal areas of Assam? After hearing the speech of my Friend, Rev. Nichols Roy, I think that he wants the tribal areas to be a separate entity so that British influence could permeate these tribals areas. As a Member of the Government, Dr. Ambedkar knows well—and I have known something—about these tribal areas.

The Honorable Dr. B. R. Ambedkar: All I can say is that it is perfectly possible to devise some means by which we can eliminate this foreign influence altogether.

Shri B. Das : The Drafting Committee...

The Honorable Dr. B. R. Ambedkar: The Drafting Committee has nothing to do with eliminating this foreign influence. It is the function of some other body but I can assure my friend that it would not be difficult to get rid of this foreign influence.

[Paragraph 2, as amended was added to the Schedule.]

(Paragraph 3)

Shri Kuladhar Chaliha : ...In fact this amendment is the same as mine and therefore Dr. Amedkar should have accepted mine than by adding like this and watering down and making a fuss of making laws. It is better to accept by amendment No. 113 than the amendment of the Drafting Committee.

The Honorable Dr. B. R. Ambedkar: The Honorable Member has already moved it for me. If you will take it as if moved by me, it will save time.

Mr. President: I take it that he has moved.

The Honorable Dr. B. R. Ambedkar: Shall I move it formally?

Mr. President: Yes.

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That after sub-paragraph (2) of paragraph 3, the following sub-paragraph be added:—

' (3) All laws made under this paragraph shall be submitted forthwith to the Governor,, and until assented to by him shall have no effect.' "

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I beg to move:

" That in amendment No. 114 of List I (Seventh Week), for the proposed subparagraph (3) of paragraph 3, the following be substituted :—

' (3) All laws made under this paragraph shall be submitted to the Governor who shall forthwith place them before the legislature of the State and until agreed to by the Legislature and assented to by the Governor such laws shall have no effect '."

The amendment was negatived

Mr. President: Dr. Ambedkar, do you wish to say anything? I do not think there is anything in this to discuss.

The Honorable Dr. B. R. Ambedkar: Sir, with regard to my Friend Mr. Chaliha's amendment No. 113,1 really do not understand what it means. It says: " The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State legislature may approve." I cannot understand what it means. I am therefore unable to say that I accept it.

With regard to my amendment and the amendment moved by my Honorable Friend Mr. Rohini Kumar Chaudhari, there is hardly any difference except a failure to understand on the part of my Honorable Friend as to what the word ' Governor ' means. He says that the laws shall be approved by the legislature of Assams. According to my amendment, the laws will be approved by the

Governor as advised by the Ministry of Assam, because in all this scheme we are dropping the words ' in his discretion '. Wherever the word Governor occurs, it means Governor acting on the advice of the Ministry. I should like to ask him whether he really thinks there is very serious difference between a law being approved by the Governor acting on the advice of the Ministry and a law being approved by the legislature of Assam itself. I think my scheme is much more consistent with the originals of the scheme, namely, that the tribal people themselves should have a certain inherent right given by the constitution to make laws in certain respects. That being so, my paragraph (3) is much more consistent with the scheme and gives the Assam Ministry some power to advise the Governor as to whether he should accept or not accept any law. The intervention of the legislature is quite unnecessary.

Shri Rohini Kumar Chaudhari : If I have understood the Honorable Dr. Ambedkar aright, I would be prepared to withdraw my amendment. I mean, if the Governor is to be advised by the Ministry and the Ministry takes the opinion of the legislature, then, I have no objection. If the advice of the Ministry means that the Ministry will take no such action until the house has had an opportunity of discussing it, then, I think it is the same thing which I want and which Dr. Ambedkar wants. In that case, I shall withdraw.

The Honorable dr. B. R. Ambedkar: I think he is understanding more than what I have said. I am not prepared to give him that assurance at all.

[Amendment was negatived. Paragraph 3, as amended, was added to the Schedule.]

(Paragraph 4)

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That in sub-paragraph (1) of paragraph 4, the words and figures ' or those arising out of any law made under paragraph 3 of this Schedule ' be deleted. "

They are unnecessary.

Sir, I also move :

" That in sub-paragraph (2) of paragraph 4, for the words ' shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final ' the words ' except the High Court and the Supreme Court shall have jurisdiction over such suits or cases ' be substituted. "

Sir, I also move :

"That after sub-paragraph (2) of paragraph 4 the following sub-paragraph be added:—

(3) the High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply, as the Governor may from time to time by order specify '."

This amendment makes an important change. Originally under subparagraph (2) of Paragraph 4 the decision of the District Court was final. Now we have provided that they shall be subject to appellate jurisdiction of the High Court and the Supreme Court which was a necessary provision.

The Honorable Dr. B. R. Ambedkar: Sir, I must say that I was somewhat surprised by my Honorable Friend's putting me these questions. I think he could have answered them himself. But I will now answer them as he has put them to me.

With regard to the first question of whether lawyers will be allowed to appear in courts established in the tribal area, the answer is very simple. In the first place, the Provincial Government will have the power, under the entry in List III dealing with professions, to make any law with regard to the legal profession; and if under that law they provide that lawyers shall be entitled to appear in the courts in the districts which are known as autonomous districts, then that law will apply unless the governor thinks that that law should not apply. Therefore, that matter is quite clear.

With regard to the question of appeals from the decisions of the tribunals which are created under this paragraph, the answer again is quite simple. The paragraph first provides that a court of appeal may be constituted there. Now the Governor or the Provincial Ministry may either constitute a new court of appeal in which case appeals will go to that court, or may declare the District Judge's Court as a court of appeal which will hear appeals from decisions made by the village panchayats and other courts. Therefore, there again there is a provision for appeal. According to my amendment now, there may be a further appeal from the District Court of appeal either to the High Court or to the Supreme Court.

Shri Rohini Kumar Chaudhari : I particularly read out these lines of subparagraph (2):—

" ...the Regional council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes... "

What would happen when one of the parties is not a member of a scheduled tribe?

The Honorable Dr. B. R. Ambedkar: If the parties are such that one is a tribal and the other a non-tribal, then the ordinary law will apply.

Shri Rohini Kumar Chaudhari : Where have you provided it?

The Honorable Dr. B. R. Ambedkar: It follows from it. Even now it says, " where the parties are... ". I do not think there is any difficulty and I hope my

friend has understood it.

Shri Rohini Kumar Chaudhari : There is no provision made anywhere, Sir.

The Honorable Dr. B. R. Ambedkar: The jurisdiction of the ordinary court is ousted only to the extent provided for in paragraph 4. Otherwise the jurisdiction of the ordinary courts continues. These will not be the only courts in this area; there will be other courts established by the Provincial Government for the purpose of administration of the general law of the Province.

[Paragraph 4, as amended, was added to the Schedule.]

(Paragraph 9)

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That sub-paragraph (1) of paragraph 9 be deleted." The paragraph refers to licence or lease granted by the Government of Assam for the prospecting for or the extraction of minerals. That matter now is with the Central Government and therefore it is unnecessary to have this sub-paragraph here.

(Paragraph 10)

The Honorable Dr. B. R. Ambedkar: Sir, I move :

"That in sub-paragraph (2) of paragraph 10 for the words 'Such regulations may ' the words ' In particular and without prejudice to the generality of the foregoing power, such regulations may ' be substituted."

It is merely a drafting change.

I also move:

" That after sub-paragraph (2) of paragraph 10, the following sub-paragraph be added:—

' (3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect'."

(The amendment was adopted)

The Honorable Dr. B. R. Ambedkar: May I say a word or two with regard to matters about which my friend is terribly excited? There are three things provided by way of safeguards which my friend has not taken into consideration. The first provision to paragraph 10 says: " Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:" This is one safeguard. The second safeguard is contained on page 184 of the Draft Constitution. It says : ' Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district

since before the time of the making of such regulations." Therefore, existing rights are not affected.

The third thing to which my friend has not cared to pay any attention is the amendment I have moved, viz., " All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect."

These precautions are there.

As regards his remarks that what the Drafting Committee has done is a barbaric thing, not done even by the British Government. I may point out that he forgets the fact that this excluded area was entirely within the discretion of the Governor; it was his fault We have altogether taken away that discretion of the Governor. He can now act only subject to the advice of the Ministry.

I wonder now whether my Friend Shri Rohini Kumar Chaudhari is satisfied with the explanation, I have given ?

Honorable Members : Not at all.

The Honorable Dr. B. R. Ambedkar: I know you want something more than what I can give. You are like hungry David Coperfield asking for more gruel.

[Paragraph 10, as amended by Dr. Ambedkar's abovementioned amendment, was added to the Schedule.]

(Paragraph 12)

The Honorable Dr. B. R. Ambedkar: May I draw attention to my amendment No. 128 on the Order Paper? As that is going to be moved, this amendment of my friend will be quite unnecessary. Therein I am proposing the omission of the words objected to by him.

Shri Kuladhar Chaliha: I am glad that for once some kind of sense has dawned upon the Drafting Committee. It is fortunate that for the first time sense has dawned on the Drafting Committee.

The Honorable Dr. B. R. Ambedkar: That is because for the first time you have convinced me by your arguments. Sir, I will now move my amendment No. 128 :

"That in clause (b) of paragraph 12, for the words ' with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be ' the words ' specify in the notification ' be substituted."

The Governor, by this amendment, is freed from the trammels of any resolution that may be passed by the District Council or the Regional Council. He can now act on the advice of the Ministry whether a particular law passed by Parliament or by the Legislature of Assam is to apply to that area or not.

[Amendment was adopted. Paragraph 12, as amended, was added to the Schedule.]

(Paragraph 13)

Mr. President: Amendment No. 129.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That in paragraph 13, after the words ' the State of Assam shall ' the words ' be first placed before the District Council for discussion and then after such discussion ' be inserted."

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I move ?

"That is amendment No. 129 above, in paragraph 13, after the words ' and then after such discussion ' (proposed to be inserted) the words ' and such separate statement pertaining to autonomous districts shall be subject to such modifications and alterations as the State Legislature may make ' be inserted."

Mr. President: Would you like to say anything. Dr. Ambedkar, about Mr. Rohini Kumar Chaudhuri's amendment?

The Honorable Dr. B. R. Ambedkar: I must complain that, although the words " Section 177 " occur in the original draft, my Friend Mr. Rohini Kumar Chaudhuri has thought it fit to bring in this amendment No. 130. The effect of regarding it as a financial statement within the meaning of 177 means that it will be discussed by the Assam Legislature and, voted upon. Amendments may be moved and the appropriation law would apply. The only thing is that before the Assam Legislature deals with it, it is desirable to allow the District Councils to have their say as to how the money should be allocated. I hope he is now content.

(Paragraph 13, as amended, was added to the Schedule)

(Paragraph 14)

The Honorable Dr. B. R. Ambedkar: Sir, I do not think that this amendment is necessary. So far as...

Mr. President: You have yourself certain amendments to move first.

The Honorable Dr. B. R. Ambedkar: Yes, Sir, I will move them first. Sir, I move :

" That in sub-paragraph (1) of paragraph 14, after the words ' autonomous districts in the State ' the words, brackets, letters and figures ' including matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph 1 of this Schedule ' be inserted."

"That in sub-paragraph (1) of paragraph 14, after the words 'autonomous districts ' in the two places where they occur, the words ' and autonomous regions ' be inserted."

" That in clause (a) and (b) of sub-paragraph (1) of paragraph 14, after the words ' districts ' in the two places where it occurs, the words ' and regions ' be inserted."

" That in sub-paragraph (3) of paragraph 14, after the words ' autonomous districts ' the words ' and autonomous regions ' be inserted."

Some of these amendments are consequential. Others are purely verbal.

Shri Kuladhar Chaliha: Mr. President, Sir, I move:

" That with reference to amendment Nos. 3500 and 3501 of the List of Amendments (Vol. II), after clause (c) of sub-paragraph (1) of paragraph 14, the following new clause be added :—

' (d) inclusion or exclusion of any tribal area from any district or Regional Council.' "

...I trust the Drafting Committee will reciprocate the kindness after all the unkindness they have shown and that they will accept this and include my amendment in (d), it will greatly improve the clause.

The Honorable Dr. B. R. Ambedkar: I should like to draw my Honorable Friend's attention to the amendment which I moved to paragraph I of this schedule, in which the provisions of sub-paragraph (3) were altered in certain respects. This matter which he now wants to provide is to be regulated on the recommendation of the Commission. That paragraph has already been passed, and therefore, it is not necessary.

Shri Kuladhar Chaliha : Is it amendment No. 99 ?

The Honorable Dr. B. R. Ambedkar: Yes, it is 99.

Shri Kuladhar Chaliha : But yet you have limited the commission here in paragraph 14 to (a), (b) and (c). That is my difficulty.

The Honorable Dr. B. R. Ambedkar: That is what had been passed.

Shri Kuladhar Chaliha : It has already been passed, but all the same you have limited it in (a), (b) and (c).

The Honorable Dr. B. R. Ambedkar: If I may explain to my Honorable Friend, the operation of sub-paragraph (3) which deals with the alterations in the tribal areas either by inclusion or exclusion, are divided into two categories. The first is this : Inclusion in any part of the said table which is (a). That the Governor can do, as the very start. For that no recommendation of Commission is necessary. But according to my amendment if action is to be taken under (b), (c), (d) and (e), then the Commission's recommendation is necessary and as I said that part has been passed by the House. It is not possible to re-open this now.

Shri Kuladhar Chaliha: You have limited it again with the consideration of the report of the Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule. You have provided amendment No. 99 but limited it again. I should like to hear what Dr. Ambedkar has to say about it.

The Honorable Dr. B. R. Ambedkar: It is not limited by paragraph 14.

Shn T. T. Krishnamachari : If the Honorable Member will please look at amendment No. 134, which wants the inclusion of the words "including matters specified in clause's (b), (c), (d) and (e) of subparagraph (3) of paragraph I of this Schedule " after the words " autonomous districts in States " in subparagraph (1) of paragraph 14 then he will find the object that he has in mind has already been served by this amendment.

Shri Kuladhar Chaliha: Thank you. Sir.

Pandit Hirday Nath Kunzru (United Provinces: General): I have some difficulty in understanding this. The amendment moved by Mr. Chaliha is to the effect that the Commission that may be appointed by the Governor should consider not merely the inclusion of any new tribal area but also its exclusion. An area may be excluded from an existing tribal area without its being included in another tribal area and that thing has not been provided for here. All that the amendment No. 99 of Dr. Ambedkar provides is that an area may be taken out of one tribal area and united to another area but there is no power given to the Commission to inquire and to report about the desirability of excluding an area altogether. Only Parliament will have the power to exclude an area, from a tribal area, but without having the considered recommendations of the Commission before it because this Commission will not be empowered to deal with the matter.

The Honorable Dr. B. R. Ambedkar: If I may deal with my Honorable Friend, Pandit Kunzru's difficulty, I think my Honorable Friend has not clearly understood the purpose of Mr. Chaliha's amendment. Mr. Chaliha's amendment is " inclusion or exclusion of any tribal area from any District or Regional Council," that is to say, the diminution of the jurisdiction of the District or Regional Council. That is what Mr. Chaliha is speaking of. What my Honorable Friend is speaking of is with the taking away altogether from an autonomous district any area and include it in the general territory of Assam. These are two quite different matters.

Pandit Hirday Nath Kunzru : Why should not the Commission be asked to report on that matter?

The Honorable Dr. B. R. Ambedkar: The Commission has got power to report. If my Honorable Friend will read the provision, he will find the following : "The Government of Assam may at any time appoint a Commission to examine and report ' on any matter ' . "Any matter " may include also the provisions contained in paragraph I and they are also specifically mentioned "specified by him relating to the administration of the autonomous districts in the State or may appoint a Commission to inquire into and report from time to time on the administration of Autonomous districts " includes matters specified, that is " any

matters ".

My amendment No. 1341 have moved in order to make it quite clear and not to lead to interpretation of the words " any matter ". I have now specifically mentioned that these may " include matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph I of this Schedule," and these will be referred to the Commission. That is the purport of my amendment No. 134.

Pandit Hirday Nath Kunzru: I understand the purport of the amendment all right and I am well aware of the contents of clauses (b), (c), (d) and (e) of the paragraph but what I say is that the Commission that will be appointed to deal with any matter connected with the administration of the autonomous regions does not seem to me to have the power of reporting that an area already included in a tribal area may be excluded from it and amalgamated with an ordinary administered area.

The Honorable Dr. B. R. Ambedkar: My Honorable Friend ought to refer to (d) of paragraph (3) of the said table.

Pandit Hirday Nath Kunzru: That has been removed by your own amendment.

The Honorable Dr. B. R. Ambedkar: That I think will have to be done by Parliament by law.

Pandit Hirday Nath Kunzru: Without having the considered recommendations of the Commission. Parliament should have before it the report of the Commission but now it will have to deal with the matter entirely on the strength of such knowledge as it may have.

The Honorable Dr. B. R. Ambedkar: This is a matter which is not within the competence of the Governor. As passed, the exclusion of any area from the tribal area's is a matter which is taken out of the purview of the Governor. It is left to Parliament to decide. This Commission is merely to guide the Governor to deal with matters which are mentioned in clauses (b), (c), (d) and (e) of sub-para. (3). Any matter which is outside it is a matter for Parliament. Parliament may appoint a Commission independently of this Commission and then legislate.

Prof. Shibban Lal Saksena: There is no provision for it.

The Honorable Dr. B. R. Ambedkar: No provision is necessary. Parliament may act upon the advice of the Assam Ministry. If Parliament thinks that that advice is not independent and that there should be independent evidence. Parliament is free to appoint a Commission and make an enquiry of its own.

Shri Rohini Kumar Chaudhuri : ...If the option of the members from the province of Assam counts for anything in regard to the discussion on this Sixth Schedule which relates primarily to Assam, I think the Honorable Dr. Ambedkar

would agree to accept any amendment. I think we are fairly unanimous—1 do not know about the two Ministers, but the rest of us are unanimous—on the need for accepting this amendment.

Prof. Shibban Lal Saksena: The Governor is free to appoint anybody to the Commission.

The Honorable Dr. B. R. Ambedkar: There are no limitations at all on the Governor.

Shri Rohini Kumar Chaudhuri: I say two members should be elected by the legislature.

The Honorable Dr. B. R. Ambedkar: He is not prevented from doing so.

Shri Rohini Kumar Chaudhuri: There is no harm in saying that. A man may live or die. Why do you say, die? I want to say live. Please accept my amendment.

The Honorable Dr. B. R. Ambedkar: The Governor will proceed to appoint a Commission on the advice of the Ministry. You think your Ministry will not appoint two members from the legislature.

Shri Rohini Kumar Chaudhuri: I want them to be elected by legislature. I attach certain importance to election by the Assembly. I think the Honorable Dr. Ambedkar also used to give such importance; but he may change his mind now.

Mr. President: There are certain other amendments proposed by Mr. Brajeshwar Prasad: 207,— "President" for "Governor"; 208,— " President " for " Governor "; 209,— " Parliament " for " State legislature"; 210—"Union " for "Assam"; 211—"Union " for "State"; 212,— "President " for "Governor"; 213,— "in the State of Assam" for "in the State".

Shri Brajeshwar Prasad: I do not want to move these.

Mr. President: All the amendments to this paragraph have been moved. Would you like to say anything, Dr. Ambedkar?

The Honorable Dr. B. R. Ambedkar: No.

Mr. President: I would put the amendments now.

[Following amendments were accepted.]

1. " That for amendment Nos. 3500, 3501, and 3502 of the List of Amendments (Vol. II). the following be substituted:—

"That for paragraph 14 of the Sixth Schedule, the following be substituted :—

" The Governor of Assam as the agent of the President may at any time appoint a Commission consisting of not less than seven members, of whom not less than three shall be members of the scheduled tribes and the rest shall be chosen from the ranks of eminent anthropologists, retired judges of the Supreme Court and of the High Courts and men of science and letters, to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, or may

appoint a similar commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational, cultural, medical economic and religious facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions;

(c) the administration of the laws, regulations and rules made by the District and Regional Councils, and define the procedure to be followed by such Commission.' "

2. "That in sub-paragraph (1) of paragraph 14 after the words ' autonomous districts ' in the State the words, brackets, letters and Figures ' including matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph I of this .schedule ' be inserted."

3. "That in sub-paragraph (1) of paragraph 14 after the words ' autonomous districts ', in the two places where they occur, the words ' and autonomous regions ' be inserted."

4. "That in clause (a) and (b) of sub-paragraph (1) of paragraph 14, after the word ' districts ' in the two places where it occurs, the words ' and regions ' be inserted."

5. "That in sub-paragraph (3) of paragraph 14, after the words ' autonomous districts ' the words ' and autonomous regions ' be inserted."

The amendment was adopted.

[Paragraph 14, as amended, was added to the Schedule.]

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